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In This Issue

Federal Budget

[President Bush's FY 06 Budget: An Overview](#)
[Bush Budget Seeks Deep Domestic Cuts, Radical Budget Reforms](#)
[CBO's Reduced Deficit Projections Mislead](#)
[Bush Makes Social Security Centerpiece of State of the Union](#)
[Center for American Progress Progressive Tax Plan](#)

Information & Access

[Republican Policy Committee Attempts to Bolster Data Quality Act](#)
[DC Council Passes Bill to Reroute Hazardous Materials](#)
[Freedom of Information Far From Free](#)
[New Website Promotes Sunshine Week March 13](#)

Nonprofit Issues

[NAACP Says IRS Summons Illegal, Politically Motivated](#)
[IRS Clarifies Rules for Foundation Funding for Lobbying](#)
[New Bill to Regulate Independent PACs Introduced](#)
[Grassley Revenue Proposal Dims Chances for New CARE Act](#)
[Investigation of Agency Use of Funds for Propaganda Requested](#)
[HHS Withholds Study Results Showing Head Start Is Effective](#)

Regulatory Matters

[Budget Includes Anti-Regulatory Proposals](#)
[Bill Would Place Homeland Security Above All Law](#)
[OSHA Must Improve Safety for Meat and Poultry Workers](#)

President Bush's FY 06 Budget: An Overview

President Bush sent his proposed Fiscal Year 2006 (FY 06) budget to Congress on Monday, Feb. 7, in a package that is one of the most special-interest-driven budgets presented in a very long time. The new budget calls for a large transfer of benefits to corporate special interests and the most well-off through additional tax cuts, regulatory and litigation "reforms," and other measures that weaken public safeguards and government in general. At the same time, the president proposes cutting programs serving low- and middle-income Americans. The budget calls for a trade-off that is both unfair and unwise.

The Bush tax cuts enacted since 2001 have resulted in federal revenue now being reduced to the level it was in the 1950s as a percentage of the economy. Faced with this prospect, it might seem prudent to roll back the cuts to raise revenue to meet today's needs. But the president proposes extending the tax cuts that largely are targeted to the wealthy and making them permanent, adding another \$ 1.6 trillion to an already burgeoning federal debt. This alone would be fiscally irresponsible.

Irresponsibility, however, is only one part of the equation. The president's solution to the growing debt is to reduce the annual deficit by cutting programs that serve you and me. The president believes that tax cuts for wealthy families are good for the country. For example, he proposes that inherited wealth, regardless of its size, should not be taxed. Currently, families may pass on \$ 3 million (\$ 1.5 million if single) tax free to their heirs, but he wants all wealth to be tax free. For families with estates larger than \$ 3 million, they are forced to pay taxes — unless they have taken advantage of various provisions to reduce their taxable amounts. For example, they may give an unlimited amount to a charity to reduce the value of the estate. Under the president's proposal, the estate tax would be permanently repealed; heirs would be able to receive entire estates without any taxation.

To pay for this policy, the president proposes to cut or eliminate around 150 non-defense programs. Nearly 50 education programs, such as vocational education, would be eliminated, along with large cuts in others such as the safe and drug-free schools program. The president also makes cuts in programs that directly affect community services including major economic development cuts such as to Community Development Block Grants (CDBG).

Discretionary programs take the brunt of the president's proposals. But FY 06 will not be the worst year for non-defense discretionary programs. The president proposes enforceable discretionary spending caps that are very restrictive for non-defense discretionary programs. (See [related article](#) on budget process reforms.) Defense spending would be allowed to grow by \$ 42.4 billion from FY 05 to FY 07, while non-defense discretionary spending would be cut by \$ 300 million over the same period. This would be bad enough, given it means that services will not be able to keep up with inflation and increases in demand. But from FY 08 through FY 10, the president proposes that defense and non-defense discretionary spending be joined under one cap. That means that increases in defense spending will come out of the hide of non-defense discretionary programs.

The president's budget is not only tough on agencies such as Housing and Urban Development, Environmental Protection Agency, Education, and Agriculture, it also raises questions about homeland security priorities. For example, the number of border guards requested do not even come close to the number identified in an intelligence bill President Bush recently signed. Additionally, while more money was requested for first responders, the allocation formula has changed. Under the president's plan, smaller communities will receive less or no money for homeland security. Combined with cuts in CDBG and other domestic programs, this will present a major problem for mayors across the country. It is also likely to put pressure on members in Congress, who will be asked to protect federal funding going to their districts.

The president also lays some markers on entitlement programs. He proposes \$ 137 billion savings over 10 years. The largest amount, roughly \$ 44.6 billion over 10 years, would come from changes in the amounts states will receive for Medicaid. In exchange for less money to the states, the president proposes to provide states with "more flexibility in determining Medicaid eligibility and how benefits are delivered." This translates into enormous pressure on states still reeling from their own fiscal crises to cut Medicaid benefits or restrict eligibility. The president also proposes changes to Title IV-E of foster care that would give states "flexibility" in financing. The proposal was put forward previously and rejected by Congress.

Worse yet, the president also proposes significant budget process reforms. These, too, are highly political and designed to constrain discretionary entitlement and discretionary spending. The highly successful pay-as-you-go (PAYGO) rules used in the 1990s give way to a new Bush plan. Under PAYGO, tax cuts had to be paid for by increasing other revenues or cutting entitlements; similarly, entitlement increases had to be offset with other spending reductions or tax increases. Under the Bush proposal, only entitlement programs would be covered by the PayGo rules; taxes would not be. This is obviously to keep from increasing taxes and to promote additional tax cuts.

Overall, the president proposes a budget of just under \$ 2.6 trillion, laying out a blueprint for slashing many domestic programs while raising spending on the military and homeland security. This budget sends a powerful signal about national priorities, creating tradeoffs between the very rich and the rest of us. In some respects this budget is the by-product of a right-wing strategy for defunding the federal government. The plan is to slash taxes so there is less federal revenue, forcing huge increases in the deficit, thereby creating a manufactured crisis that calls for spending cuts. Congress must resist the president's message and recognize that there are national needs that cannot be ignored. While program efficiencies should always be sought, Congress must provide an adequate revenue base to meet public needs.

A Runaway Debt Has a Price

It took since the beginning of this country until 2000 to amass a \$ 5.6 trillion debt. But President Bush will have nearly doubled it by the time he leaves in 2009. The debt is scheduled to rapidly rise every year from this point on – and that increase is also true as a percentage of the economy.

A rising national debt has consequences. It means that the country must borrow more money for which we will have more annual interest payments to make. In FY 04, we spent \$ 160.2 billion on debt interest. By FY 10, we will spend \$ 313.9 billion – nearly double the amount paid six years earlier.

These are such large numbers that it is sometimes difficult to imagine their magnitude. But \$ 313.9 billion in FY 10 is roughly equal to all government outlays excluding defense, Social Security, Medicare, income security and other health programs. It could fund all programs dealing with education, employment, social services, energy, community and regional development, international affairs, agriculture, and general science, and still have money left over.

Put another way, interest on the debt in FY 10 will equal the cost of running the Departments of Agriculture, Commerce, Education, Energy, Interior, Justice, Labor, State, and Housing and Urban Development.

A Slick but Misleading Budget

The president presents a snappy budget, complete with pretty photos on slick paper. His Management Agenda includes a Program Assessment Rating Tool (PART) — a five-part scoring system to rate programs — and a Standards for Success that provides green, yellow or red dots as a scorecard on achieving agency goals. The president also has each agency address his presidential goals, which include:

- Promoting economic opportunity and ownership;
- Protecting America;
- Supporting a compassionate society;
- Making government more effective;
- Agency-specific goals.

In addition to his tax policies, the president also notes the need for litigation and regulatory reform. On litigation reform, the president calls for changes on medical liability, class action law suits, and asbestos litigation. On regulatory reform, the president emphasizes the need to address the costs of regulation, as well as the need to review regulations periodically for “relevancy.” (See [related article](#) on management changes being proposed.)

All of this provides an impression of transparency and efficiency. But this is a thin veneer. The good-sounding words are not followed with substance to back them up. And what substance is provided tilts heavily in favor of special corporate interests, not the public interest. On litigation and regulatory reform, these are special interest favorites pushed by industry and conservatives. On management reforms, the PART gives the White House Office of Management and Budget authority to assess programs, helping to politicize results. The presidential goals sound nice, but, as described above, fraught with large budget cuts. Supporting a compassionate society may increase faith-based groups in getting government grants, for example, but there are fewer resources with which to do the work. In other words, faith-based groups may get a larger piece of the pie, but the pie itself is getting much smaller.

The issue is not just a slick budget with a very political agenda, it is also that the numbers used in the budget present a misleading picture by:

- Providing discretionary spending details for only one year, instead of multiple years as is the tradition. The result is that the budget does not show the full impact of proposed cuts — even though the president proposes discretionary spending caps that will force large cuts in future years.
- Not providing the costs for making the Bush tax cuts permanent.
- Not including the cost of the continuing wars in Afghanistan and Iraq. For 2006 and beyond, the president provides no figures.
- Not including the cost of his Social Security reform plan, which is projected to cost \$ 754 billion in its first five years, \$ 1 trillion to \$ 2 trillion over the first decade, and around \$ 4.5 trillion over 20 years.
- Not counting the \$ 774 billion ten-year cost of reforming the Alternative Minimum Tax.
- Claiming to cut the deficit in half over four years when in fact the president uses an earlier inflated estimate of the deficit to serve as the baseline from which to show cuts. Inevitably, the reduction in the deficit will be misleading because of all of the above factors and for one other reason – Congress is unlikely to accept the president's proposal to eliminate nearly 150 non-defense programs.

Like budgets produced in the Reagan era – when education and human services program eliminations, consolidations, and cuts were the norm – it was difficult to follow the proposals from the documents presented to the public. The Bush budget provides a summary of program increases and new initiatives, including “\$ 3.7 billion for a new economic and community development program that consolidates 18 ineffective or duplicative programs into a flexible and targeted program.” What is not said is that this new initiative cuts \$ 1.8 billion from the consolidated programs, including the Community Development Block Grant.

Long-Term Implications

The president's budget puts this country on the wrong track. Using the president's assumptions and projections, the deficit will begin to get better as a percentage of the economy. But by 2013, the deficit falls off a proverbial cliff and things only get worse for as far as the eye can see. By 2070, the deficit would be 15 percent of the GDP, an unsustainable level. The deficit as a percentage of GDP is currently less than 4 percent, and it has stimulated national concern about its size.

These long-term projections by the administration also do not include any of the above factors left out of the budget (e.g., Social Security reform, costs of continuing wars). Moreover, if productivity is lower than projected the steepness of the cliff is even greater.

All in all, this is a clarion call for thinking beyond the immediate action of any one fiscal year. The tax cuts enacted since 2001 were ill-advised and must be rolled back. Otherwise the draconian cuts will create seismic disruption and disaster in our communities.

Bush Budget Seeks Deep Domestic Cuts, Radical Budget Reforms

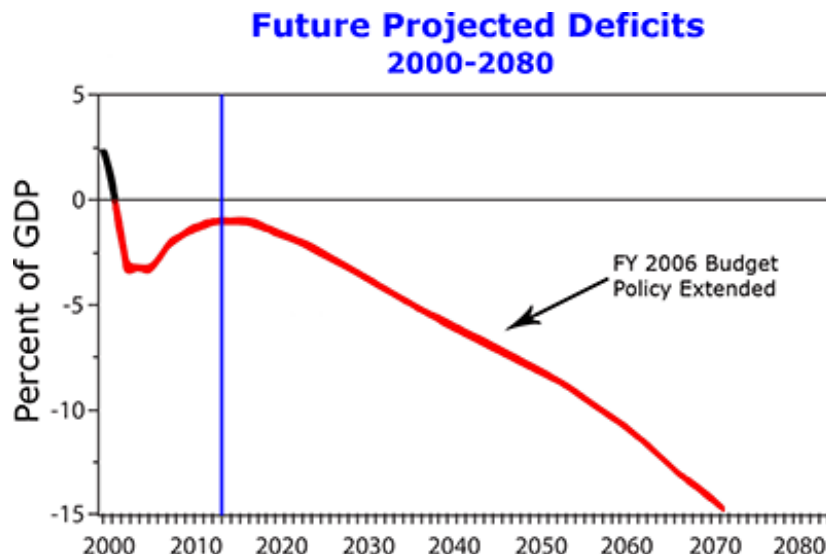
The president's Fiscal Year 2006 (FY 06) budget was released today and contains deep cuts in domestic discretionary spending except for homeland security. Overall, the president's \$ 2.57 trillion budget seeks to cut non-defense domestic discretionary spending by 1 percent – eliminating dozens of popular government programs and drastically reducing funding for many others.

Hardest hit among the federal agencies are the Departments of Housing and Urban Development (11.5 percent cut in discretionary authority), Agriculture (9.6 percent cut), Transportation (6.7 percent cut), Justice (5.5 percent cut), and Labor (4.4 percent cut). These figures do not include the impact of inflation, which would exacerbate the impact of the cuts. OMB Watch will provide updates on further programmatic impacts.

The administration has focused on increases in non-defense domestic discretionary spending as the cause of the budget deficits incurred since the president took office in 2001. Unfortunately, the numbers tell a different story. A number of analyses have shown that roughly half of the deficit incurred since 2001 has been caused by the massive 2001/2003 tax cuts – which primarily benefited upper-income Americans. Rather than rolling back these tax cuts in his budget in order to stave off drastic cuts to other programs serving low-income Americans, the president has proposed extending those cuts

permanently. The result is that the five-year deficit projections actually increase according to the administration's own numbers despite crippling cuts to numerous domestic programs.

The long-term projection is even worse. The long-term view in the figure below shows the current enormous deficits as just the tip of the iceberg. As the baby-boom generation ages, the deficit as a percentage of GDP will take a steady and sharp nose-dive after 2013. This graph shows the current tax and budget policies to be unsustainable and highly irresponsible in the long run.



Budget Process Changes

Unfortunately the proposed budget numbers and horrific long-term fiscal outlook are not the only bad news in the budget release. The president has also included a number of proposals that would significantly change the process by which Congress develops and approves the federal budget. Taken in total, these proposals would make it very hard to increase spending on entitlement programs, would do nothing to pay for additional tax cuts, would greatly constrain spending on non-defense discretionary spending over the next five years, and would shift the balance of power surrounding the budget process from the legislative to executive branches.

Special Treatment of 2001 and 2003 Tax Cut Legislation

The radical proposal in the budget concerns rules on scoring the 2001 and 2003 tax cuts. These tax cuts are set to expire at various times from now until 2010. The president is proposing that the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) consider the extension of those tax cuts as if they have already happened in all future cost projections. By doing this, any legislative proposals to actually extend those cuts would be seen (in CBO and OMB cost projections) as revenue neutral – or as not costing any money. In fact, current CBO projections show the extension of the tax cuts as costing \$ 2.1 trillion – quite a bit more than zero.

One-Sided PAYGO rules

The administration is also proposing one-sided Pay-As-You-Go (PAYGO) rules that would bar any legislative changes to mandatory spending that would increase the deficit or raise taxes. The only option for increasing funding for mandatory programs under this proposal would be decreases in funding for other mandatory programs, once again pitting programs serving low- and moderate-income Americans – such as unemployment insurance, Food Stamps, and Medicaid – against each other.

This proposal changes the old version of PAYGO rules, which required that both mandatory spending increases and tax cuts be paid for. Under the president's proposed change, there would be no limit on the number or amount of tax cuts and no requirement those cuts be paid for. By doing this, the administration opens the door for further government busting deficit-financed tax cuts.

Discretionary Spending Caps

The president also proposes spending caps on discretionary spending from FY 05 through FY 10 that would be divided into defense, non-defense, highway, and mass transit categories. From FY 08 through FY 10, the defense and non-defense categories would be collapsed, allowing money within the cap to be used for either defense or non-defense activities. (The highway and mass transit categories would continue to remain separate, providing their funding.) Combining the defense and non-defense categories creates a financial squeeze, especially in FY 08–FY 10, as the Defense Department budget will increase faster (in percentage terms) than all the rest of discretionary spending. The remaining discretionary programs will be forced to compete with the military for a proportionally decreasing slice of the pie.

Proposed Discretionary Spending Caps*(in billions of dollars)*

	2005	2006	2007	2008	2009	2010
Defense Category						
BA.....	420.2	438.8	462.6	NA	NA	NA
Outlays.....	463.5	444.3	446.1	NA	NA	NA
Non-Defense Category						
BA.....	402.5	401.5	403.1	NA	NA	NA
Outlays.....	427.1	436.1	430.0	NA	NA	NA
Combined Defense/Non-Defense						
BA.....	NA	NA	NA	886.6	907.9	919.8
Outlays.....	NA	NA	NA	889.3	905.6	971.4
Highway Category						
Outlays.....	32.1	34.4	34.9	36.0	39.3	NA
Mass Transit Category						
Outlays.....	7.2	6.9	6.5	6.9	7.0	NA
Total Cap on Discretionary Spending						
BA.....	822.7	840.3	865.7	886.6	907.9	919.8
Outlays.....	929.9	921.7	917.4	932.2	951.9	971.4

The implications of these caps are huge. The Center on Budget and Policy Priorities has calculated that if defense, homeland security and international affairs are funded at the levels the president proposes, by 2010 the rest of discretionary spending will need to be cut by 16 percent to remain under the total discretionary cap (See [Assessing President Bush's New Budget Proposal](#)). For reference, the president has proposed cutting this group of programs by one percent in FY 06. Therefore those programs would most likely see a four percent cut on average each year after FY 06.

Other Proposals

The president has also proposed a number of other budget process reforms that would greatly increase the power of the executive branch of government. The first is a line-item veto for appropriations bills. With this power, President Bush and future presidents could sign appropriations bills into law, but strike out specific spending earmarks within the bill. As written in his own budget proposal, this power would, "give the president authority to defer new spending whenever the president determines the spending is not an essential government priority." This power (which was already struck down by the Supreme Court as unconstitutional during the Clinton administration) would greatly undermine the constitutional power of the purse that is given to Congress.

Another proposal involves changing the congressional budget resolution from a "concurrent resolution" to a "joint resolution." This means the yearly budget resolution – which serves as a non-binding roadmap for Congress as it moves through the budget process – would be subject to presidential approval or veto. This would greatly increase the control the president has over the content of the budget resolution.

Other reform proposals, such as biennial budgeting, automatic appropriations, and ten-year sunsets on all programs, would also greatly weaken the power of the legislative branch while shifting power to the executive. These are drastic and unprecedented proposals that Congress must reject.

CBO's Reduced Deficit Projections Mislead

Last week, the Congressional Budget Office (CBO) released an updated Budget and Economic Outlook with new 10-year deficit projections for 2006–2015. The report estimated 10-year deficits to have dropped from \$ 2.3 trillion to \$ 1.4 trillion since last September, a 39 percent decrease. These conclusions, however, are very misleading.

The CBO's recent [Budget and Economic Outlook](#) is an update to an earlier analysis it released last September. By law, the CBO must only use currently enacted policies and laws in creating their budget outlook projections. The improvement in the budget deficit projections are a direct result of this requirement. When the report was released last September, the CBO included \$ 115 billion per year through 2014 for supplemental defense expenditures in Iraq and Afghanistan in their projections. At the time, a supplemental appropriations bill for \$ 115 billion had recently been approved.

In their current estimates, the CBO includes no supplemental funding for Iraq and Afghanistan. Yet it is universally acknowledged that more supplemental funding will be requested by the Department of Defense and provided by Congress. The next supplemental request is expected to be at least \$ 80 billion and it was recently reported there is likely to be a second supplemental request of at least another \$ 80 billion before 2005 is over.

The new CBO report acknowledges this discrepancy and includes adjustments to their previous projections in order to have a fair baseline to compare the two reports. When this adjustment is made, CBO concludes that ten-year deficit levels will actually increase by half a trillion dollars, or 0.3 percent of GDP. Three-quarters of this increase is due to legislation surrounding the extension of tax cuts. Further, the CBO projections fail to take into account some costly policies that are widely expected to become law in the near future. These include reforming the Alternative Minimum Tax (\$ 400 billion over 10 years), extending expiring tax cuts (up to \$ 1.3 trillion over 10 years), and creating private accounts in Social Security (\$ 1–\$ 2 trillion). Given the potential costs of those policies, as well as projected increases in health care costs, it would be foolish and irresponsible for policymakers to think they can sufficiently pay for those policies – and the nation's other spending priorities – while attempting to make Bush's tax cuts permanent. Yet that is exactly what the administration is proposing. Doing so would explode deficits far beyond any projections we are seeing today.

For good articles on the Budget and Economic Outlook released last week, read [this article](#) in the *Washington Post* and [this article](#) from Bloomberg News. To read more about why CBO projections tend to underestimate the real picture of the deficit read this [OMB Watch analysis](#) by economist John Irons. Written last fall, Dr. Irons explains his take on why ten-year budget deficits will most likely be much greater than any predicted by the CBO.

Bush Makes Social Security Centerpiece of State of the Union

When President Bush [addressed Congress and the nation](#) on the evening of Feb. 2, he devoted much of his address to his proposed changes to Social Security, yet declined to provide the American people with details regarding exactly which reforms he plans to pursue. Many believe this strategy is to avoid what President Clinton faced when he tried to reform health care a decade ago. Clinton had submitted a heavily detailed proposal to members of Congress, who were then able to pick it apart and subsequently defeat it. Bush's deliberate vagueness allows him to sell his plan to the nation conceptually, while leaving us to guess what the true consequences of his reforms might be.

President Bush began his discussion of Social Security with a laundry list of statistics about the system and where it is heading if nothing is done about it. While stating the facts Bush used some potentially misleading rhetoric. He said, "by the year 2042, the entire system [will] be exhausted and bankrupt." The words "exhausted and bankrupt" do not accurately describe the situation. The White House's own Social Security Trustees have predicted a 27 percent benefits cut by the year 2042 if no reforms to the program are passed. The nonpartisan Congressional Budget Office (CBO) has predicted a 22 percent benefits cut by the year 2052 if no reforms are passed. This one-quarter cut to benefits is not the same as "exhausted and bankrupt." By then our surplus will be exhausted, not the entire trust fund.

Bush used these words to make the situation appear more dire than it actually is and to gain more support for his plan to overhaul what is, in fact, [a financially sound program](#). Additionally, the projected cuts do not come close to the size of the cuts projected if future workers participate in private accounts in an economy seriously burdened with debt. (For details on the subject see this [recent report](#) from the Center on Budget and Policy Priorities.)

While discussing the future of Social Security, Bush went into detail regarding the shortfall that lies ahead. He said, "For example, in the year 2027, the government will somehow have to come up with an extra \$ 200 billion to keep the system afloat - and by 2033, the annual shortfall will be more than \$ 300 billion." These numbers may be accurate, however the context in which Bush used them is misleading. To begin with, the shortfall created by Bush's 2001 and 2003 tax cuts is significantly larger than any Social Security could create. In fact, in 2027, the tax cuts are projected to cost approximately \$ 345 billion, and in 2033, \$ 375 billion. The Social Security shortfall "crisis" could easily be avoided if this administration had more fiscally responsible tax policies. Secondly, by proposing to divert revenue from Social Security to private accounts, the president will end up *adding* approximately \$ 100 billion to the amount of the shortfall by decreasing the amount of money available in the general fund needed to pay out benefits.

In discussing solutions, the president noted many options were on the table regarding which plans to pursue. He mentioned eliminating Social Security payments to the wealthy and invoked ideas supported in the past by Democrats such as the late Sen. Daniel Patrick Moynihan of New York. After listing a number of ideas, however, Bush spent a good deal of time discussing the benefits of personal accounts. The few details he provided included that he will never raise payroll taxes to address the upcoming shortfall, unlike President Reagan who surprisingly did in 1983. Instead, Bush said

he supports a plan which would divert 4 percent of income — about 35 percent of the amount of personal funds currently going towards the payroll tax — into private accounts to be invested in stocks, bonds and mutual funds. The 4 percentage points outlined by Bush are in fact almost two-thirds of the 6.2 percent currently paid by workers into the system. The ideology behind this proposal is that investment as opposed to taxes could potentially yield higher returns for some beneficiaries as well as avoid a shortfall by moving a chunk of the payments from government funds to private stocks and bonds.

This plan fails to take into account two major details. One is that moving this money from government revenue to financial markets adds an extreme level of risk to the amount of money recipients will end up collecting. Social Security money is currently invested in government bonds, which are risk-free. Moving that investment to the financial markets opens the door to the possibility that people will collect less than they would under our current, straightforward social insurance program. Secondly, there has been little discussion of the fact that diverting revenue from taxes going to the government to financial markets significantly impacts the ability of the government to continue to pay Social Security benefits. A shortfall in these funds would mean that the date at which Social Security benefits are scheduled to exceed payments will come sooner.

According to the CBO, in the year 2020, tax revenues will no longer be sufficient to pay benefits and the program will have to start using interest it has accrued on the trust fund. If significant levels of revenue are diverted from the trust fund beginning in 2009, this date will move up to 2012, as estimated by the Center on Budget and Policy Priorities. The projected shortfall that Bush claims to fear so greatly would occur significantly sooner under his plan.

Senate Democrats did respond to the comments Bush made about Social Security in the State of the Union address. All but one signed onto a letter to the president addressing the problems they see. The letter stated, "According to most estimates, setting aside 4 percentage points of the 12.4 percent Social Security payroll tax — nearly one-third of the tax — would require the government to borrow close to \$ 2 trillion over the next 10 years in order to pay scheduled benefits to current and near-retirees. Adding this borrowing to the policy changes above would bring the per capita share of the debt to close to \$ 30,000 by 2015, the end of the ten-year budget window."

The senators make an important point in their letter. If 6.2 percent of workers' incomes are currently going towards general national revenue, and then 4 percent is diverted to the private sector, the government loses out on a large sum of money that otherwise would have been there. This accounts for the high level of debt that many predict such a policy will create. If the plan goes into effect in 2009, from that year until 2018, the plan is expected to generate \$ 1.3 trillion worth of debt for the American people. From 2019–2028, it would cost an extra \$ 3.3 trillion. Bush and others who support private investment accounts have made it clear they are pursuing these reforms because the retirement security of their children and grandchildren depend on it, not to mention the solvency of Social Security.

Bush has said, "Leaving our children with such a mess would be a generational betrayal." But personal investment accounts in place of guaranteed, government-funded benefits will provide neither security nor solvency. They will instead further lead the program towards bankruptcy, all while placing trillions of dollars worth of debt onto the shoulders of the next generation. When Bush and GOP members of Congress discuss "doing this for the children," remember this: Their irresponsible fiscal policies are putting "their children" further into debt. If Bush succeeds in reforming Social Security in the way he wants, every child born in this country starting in 2015 will be born \$ 30,000 in debt.

It is no secret America's economic system does not provide equally, adequately or even fairly for all. The existence of a viable safety net is necessary to ensure millions of citizens are able to live their lives with a basic level of quality and dignity. There are many questions the administration and Congress should ponder in deciding whether to dismantle Social Security in favor of private investment accounts.

For more on this topic, see:

- [Democrats Take Aim at Social Security Proposal](#)
- [Introducing Private Investments to the Safety Net](#)
- [Bush Puts Much of Legacy on the Line With Social Security Plan](#)
- [Credibility Deficit](#)
- [CBO report](#) on long-term projections for Social Security
- [An analysis](#) of how Bush's numbers are misleading, from the Center on Budget and Policy Priorities.

Center for American Progress Progressive Tax Plan

On Jan. 31, the [Center for American Progress](#) unveiled its [progressive tax plan](#), titled "A Fair and Simple Tax System for Our Future: A Progressive Approach to Tax Reform." This comprehensive plan provides an alternate vision for tax reform based on the themes of fairness, simplicity, and opportunity through tax policy. The release of this plan is part of a broader Progressive Policy Series the Center is publishing aimed at outlining responsible policy proposals and proposing steps lawmakers can take to enact them.

The Center chose to work on a fair, simple and progressive tax plan as a response to what it believes are irresponsible policies pursued by President Bush and Congress. In his first term, Bush pushed through tax cuts that primarily benefited the wealthiest, making our federal tax system increasingly complicated and unfair. He has taken away revenue sources necessary to fund both his policies and national policies that were created and put in place before his time. And although Bush is not expected to push fundamental tax changes in Congress until late this year at the earliest, he has made it known he wants tax reform to be a central priority during his second term.

The progressive tax policies promoted by the Center for American Progress would restore fairness, simplify the tax code, and increase economic opportunity. The Center's plan would tax each source of income fairly, reduce the dependence on payroll taxes (which are regressive), and enhance the take-home pay of lower-income taxpayers. To simplify the tax code, the authors of the plan propose reducing the number of income tax brackets from six to three, and taxing each progressively at 15, 25 and 39.6 percent. The plan also closes corporate and individual tax loopholes, and eliminates the Alternative Minimum Tax. To increase economic opportunity through the tax code, the plan restores fiscal discipline by addressing the record deficit situation, working to close the current fiscal gap, and offering Americans new opportunities to save and create wealth for retirement. The Center proposes getting rid of the "upside-down deduction-based incentive and replace it with an across the board 25 percent refundable tax credit for retirement savings." This would offer Americans an incentive to save for their retirement.

The Center's tax plan would keep the income tax progressive, which is an important way to level the playing field and increase equity in our society. It reduces taxes for approximately 70 percent of taxpayers — those making less than \$ 200,000 annually — and provides an average tax cut of more than \$ 600. Those who make over \$ 200,000 would see some tax increase. Most importantly, these specific policies end up reducing the deficit by nearly \$ 500 billion over the next ten years, which is key given new [CBO projections](#) putting the FY2005 deficit at well over \$ 400 billion. It is clear the fiscal health of this nation would benefit from proposals such as the ones put forth in the Center's progressive tax plan.

Republican Policy Committee Attempts to Bolster Data Quality Act

The Senate Republican Policy Committee (RPC) appears to be preparing for a battle over the Data Quality Act (DQA), as it recently released a very slanted background document that praises the law's benefits and attempts to bolster its legitimacy.

Contrary to its intentions, the Jan. 18 [RPC paper](#) actually supports criticisms that OMB Watch and other public interest groups have leveled at the DQA since the law's inception — that it is a tool to hinder regulation through attacks on information. The text of the paper states, "Another purpose of the law was to prevent 'regulation by publication,' where federal agencies publish unsupportable claims that achieve a regulatory impact without having to go through the regulatory process." The RPC is claiming that agencies are creating pressure on companies to take action without formally producing a rule that requires action, but instead by merely publishing information. There is no evidence agency publications can achieve the same impact as a regulation or that any agency has published "unsupportable claims."

However, there is mounting evidence that the business community has used the DQA to delay and derail regulations by attacking and weakening the publications uses as foundations for those regulations. An [OMB Watch report](#) documented the use of the DQA for anti-regulatory purposes by regulated industry.

The RPC report cites a challenge filed by the Competitive Enterprise Institute (CEI), an industry-funded organization, as an example of how the DQA can ward off bad information. But the example demonstrates how industry attempts to use the DQA as a means to silence discussion of important public protections. In this case, CEI submitted petitions to several agencies challenging the quality of a peer-reviewed government global warming report. The issue of global warming is highly controversial, with disagreement on its existence within the policy and scientific communities. CEI raised complaints about the peer review process and the accuracy of data models used in the creation of the report. However, instead of recommending corrections for the challenged information, as required under the DQA, CEI requested the complete removal of the document from public distribution.

The government's global warming report did not represent "regulation by publication." The report was a best effort to define the global warming issue based on the best information and methods available at the time, and did not have direct implications for the operations of regulated industry. The report, as do most scientific studies, represented a stepping stone to better understanding of the issue, new research and improved models. Removing the information stifles dialogue on the issue, and does nothing to correct any misinformation in the document. CEI filed a lawsuit over the challenge and settled the case by getting a disclaimer placed on the report noting that it did not comply with the DQA. In reality, the DQA has not garnered improvements in data quality. Instead, it has created more burdens on agencies and has given industry a tool for derailing, delaying and diluting the regulatory process.

The RPC also looks to correct supposed misperceptions about the DQA in its report. Most notably, it asserts that the DQA

was **not** a last-minute rider that had no debate in Congress (it was attached to the Treasury and General Government Appropriations Act for Fiscal Year 2001 at the last second by Rep. Jo Ann Emerson (R-MO)). The RPC explains that the DQA was simply another version of the data quality measures contained in the [Paperwork Reduction Act of 1995](#), and that several hearings were held on that law. Although the Paperwork Reduction Act does mention quality of information several times, it does not contain any instructions for specific criteria or the creation of a mechanism to allow companies to challenge particular information. Therefore, any hearings or analysis could not have explored the issue substantively since the law only vaguely alluded to the principle. The RPC's claim that this was equal to debate on the DQA is unconvincing.

It appears that the some business groups and conservatives will also attempt to revisit the issue of judicial review under the DQA for petitioners seeking the correction of information. Currently the law contains no mention of the issue. This lack of language in the law caused two judges to rule in 2004 that the law does not provide judicial review. The Department of Justice agreed, saying that no statutory basis for federal court review exists, as the DQA does not contain any provisions allowing private parties to enforce the statutory terms in court. The industry groups that have filed suit against the government are sure to support any move to incorporate judicial review under the law.

DC Council Passes Bill to Reroute Hazardous Materials

Last week, the City Council of Washington, DC, voted 10–1, with one abstention, to enact emergency legislation requiring rail companies to reroute hazardous cargo around the city. This legislation, "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005," will make Washington the first city in the nation requiring companies to route hazardous cargo shipments away from population centers. The bill now only needs DC Mayor Anthony Williams' signature.

This vote came on the heels of a deadly chlorine leak from a hazardous-cargo train in the small town of Graniteville, SC. The Jan. 26 collision killed nine people, injured more than 250, and forced 5,400 residents from their homes. However, the consequences could have been much worse if the accident had occurred near a more populated area – such as the nation's capital. According to a Naval Research Laboratory study, if a similar incident happened on an existing rail line near the National Mall with Fourth of July crowds, 100,000 people could be killed in 30 minutes.

Washington is not the only city that needs to address the very real security and safety vulnerabilities that come with the shipping of hazardous materials. On a daily basis, trucks, trains, barges and pipelines carry some 800,000 hazardous material shipments throughout the country, with dangers often unknown to many people. Yet federal incident databases give governments and communities an incomplete picture of hazardous shipments and mishaps.

Most local officials have no idea what hazardous materials move through their communities because truckers and carriers fought for and received an exemption from the country's two most important environmental right-to-know laws. These laws, the Emergency Planning and Community Right-to-Know Act of 1986 and the Clean Air Act Amendments of 1990, enable communities and local officials to find out about chemical hazards in facilities, but not about chemical hazards in motion, on wheels or tracks, that pass through neighborhoods.

The Surface Transportation Board, an independent federal agency, requires carriers to report a 1 percent sample of their yearly shipments, but this information is presented in a way that is not helpful to local officials in determining the risks of hazardous chemical shipments. The Surface Transportation Board should require annual totals and worst case scenarios for the most hazardous chemicals and make those available to the public and local officials.

The DC bill shows that cities and communities can act to protect and inform their citizens. Officials in other cities should carefully examine the DC bill and consider implementing similar safeguards for their region. Local officials and communities should also demand carriers make available annual totals of hazardous chemicals shipped through communities and worst case accident scenarios for those chemicals.

Risks from transporting hazardous cargos can ultimately be minimized by: reducing the use of hazardous chemicals; giving the public the right to know about hazardous cargo shipments; and rerouting hazardous cargos away from population centers.

It is unacceptable that three years after the 9/11 terrorist attacks the federal government still has no program to minimize risks from hazardous chemicals. In fact, federal government officials have publicly opposed the district's efforts to re-route hazardous cargos. But there is no federal program to ensure that hazardous cargo shipments do not travel through population centers; no federal program to compel users of hazardous chemicals to consider and substitute safer chemicals where practical; and no federal program to fully inform communities about hazardous cargo shipments. This leaves the matter in the hands of states and cities. Washington, DC, has taken this matter firmly in hand and is doing something about it.

Freedom of Information Far From Free

The Justice Department has informed the [People for the American Way](#) (PFAW) that responding to the group's Freedom of Information Act (FOIA) request for all records related to the decision to seal the records of immigrants detained in the wake of the 9/11 terrorist attacks will cost nearly \$ 400,000. The unusually large price tag appears to be the agency's latest move in an ongoing struggle to withhold the information.

PFAW, a leading civil rights organization, filed the [FOIA request](#) more than a year ago on Nov. 25, 2003. The Justice Department immediately denied the request on the grounds of privacy and then denied the organization's appeal. PFAW, unsatisfied with the Justice Department's claims, filed a lawsuit in August 2004 seeking the records.

Then on Jan. 11, two days before the deadline for arguing why the lawsuit should be summarily denied, the Justice Department reported that it had [changed its position](#) and would search for the requested records. The organization was told that an initial canvass of U.S. Attorneys' offices led to an estimated search time of 13,314 hours, which at \$ 28 an hour, would make the total search fee approximately \$ 373,000. Justice also cautioned that this was only an estimate and the final cost could be higher.

The Justice Department requested that PFAW pay the estimate in advance and gave the organization until Feb. 10 to respond. Lawyers for the department have asked for a court hearing during the week of March 14.

PFAW requested the information so it could produce a public report about the government's efforts to use secrecy against hundreds of unidentified detainees who were arrested and held for months without criminal charges following the 9/11 attacks.

New Website Promotes Sunshine Week March 13

The Sunshine Week project debuted a new website this week, [sunshineweek.org](#), that offers a number of resources and tools to journalists and others looking to cover or participate in this year's activities. The intent of Sunshine Week is to highlight the importance of open government through news stories and other media during the week of March 13. Reporters and editors can find at the website an array of op-eds, story ideas, reports, links to participating groups nationwide, and other resources.

Sunshine Week is a new national initiative that builds on the success of past Sunshine Sundays, which began in Florida. Sunshine Sundays resulted in the publication of stories, cartoons and editorials on the importance of open government and how government information is used on a daily basis by both the public and the media. The initiative is already receiving enthusiastic responses from news and other media outlets across the country.

The [American Society of Newspaper Editors](#) is leading the project with help from the [American Library Association](#) and a 54-member Steering Committee.

NAACP Says IRS Summons Illegal, Politically Motivated

On Jan. 27, the National Association for the Advancement of Colored People declined to respond to a summons from the Internal Revenue Service in an audit based on charges of illegal partisan activity. The NAACP said the IRS did not follow proper procedures and the agency's actions are politically motivated. The IRS denied its motives are political and referred the allegation to the Treasury Department's Inspector General for Tax Administration. The audit is unusual because it is based on NAACP Chairman Julian Bond's July 2004 convention speech that criticized Bush administration policies.

The IRS issued the summons Jan. 14, seeking information normally reported in the annual nonprofit IRS return, Form 990. The NAACP response said the summons was not issued for a legal reason because it is not yet due, noting, "It appears that political pressure, rather than any sound legal authority, motivated the Service to ignore the statutorily-mandated procedures for initiating an examination." The letter noted the IRS can only take action prior to filing Form 990 if it meets the requirements of Section 6852 of the Internal Revenue Code, which gives the IRS authority to act on flagrant violations of the prohibition on electioneering by 501(c)(3) organizations. The NAACP letter said, "While criticism of an administration's policies might constitute intervention under some set of circumstances, it hardly rises to the level of a 'gross violation' or a 'flagrant' expenditure. Indeed, criticism or praise of government policy is First Amendment speech of a high order in a democratic society."

On Nov. 12, 2004, IRS Commissioner Mark Everson responded to a letter from Sen. Max Baucus (D-MT), who asked for more information on the motivation for the audit and expressed concern about Nixon-era type intimidation tactics. Everson's letter said the IRS had not received any request to audit any group from the executive branch, but that two members of Congress requested "we look at one or more organizations in this area." Everson said those requests were treated the same as any other third party referral.

The NAACP letter, noting the requests from members of Congress, said, "The IRS has not explained its motivation for initiating an exam program at the behest of political figures who may themselves have been active participants in the campaign However, we must conclude that the intention was to chill appropriate voter registration and get-out-the-

vote efforts, while conducted by the NAACP or by other organizations that are targeted by similar examinations in the program.”

Everson’s letter to Baucus denied political motivation, saying that “career employees determine whether specific information we review warrants further action.” He described the IRS program to enforce the ban on partisan activity by 501(c)(3) organizations in 2004 as consisting of education and enforcement. The enforcement effort was overseen by a committee of career employees that was created in the summer. They reviewed more than 100 cases and more than 60 were selected for examination, including about 20 religious organizations. Details, including the identity of the groups being audited, have not been made public because tax law protects the privacy of the groups. Everson did say the groups represent diverse viewpoints.

Everson noted changes in the law since the Nixon era. Any White House request for IRS action must be signed by the president and reported to Congress’s Joint Committee on Taxation (Internal Revenue Code Section 6103(g)). Executive branch employees and cabinet heads are prohibited from making such inquiries by Section 1105 of the IRS Restructuring and Reform Act of 1998.

IRS Clarifies Rules for Foundation Funding for Lobbying

A recent letter from the Internal Revenue Service to the Washington, DC-based nonprofit, Charity Lobbying in the Public Interest, sheds light on the rules that govern private foundation lobbying. CLPI had requested that the IRS answer a series of questions aimed at clarifying the law on foundation support of nonprofits that engage in lobbying. The response from the IRS dispels the misperception that foundation funding of nonprofits that lobby is inappropriate and illegal.

The CLPI letter had asked the IRS to clarify the conditions under which private foundations can pursue activities designed to influence public policy, when a foundation can make a grant to a nonprofit, and the freedom permitted to foundations to both lobby and earmark funds for lobbying by nonprofits.

The IRS response notes the difference between what private foundations can do themselves and the wider scope of activities they can fund. It details the conditions under which private foundations can engage in activities that shape public policy. According to the IRS, private foundations may engage directly in a wide range of educational activities that influence the formation of public policy but are not lobbying, as long as the foundation does not state a viewpoint on specific legislation in its communications with legislators or their staff, and does not present a call to action. The restrictions do not limit foundations’ contact with executive branch officials in order to assist the development of regulations.

The letter specifies the conditions under which a foundation can make a grant to a nonprofit for a specific project that includes lobbying. It states that a private foundation can make a grant to a public charity for a specific project that includes lobbying if no part of the grant is earmarked for lobbying, and the private foundation obtains a proposed budget that shows that the amount of the grant does not exceed the amount budgeted for activities that are not lobbying, as long as the foundation believes in the accuracy of the budget.

The letter also makes clear the ability of community foundations, which are public charities and therefore under different regulations than private foundations, to engage in or fund lobbying activities. This gives them greater flexibility than private foundations. If they have chosen to use the expenditure test in Section 501(h) of the IRS Code to measure their lobbying limit, they can engage in or fund lobbying activities up to their expenditure limit. If they do not use the expenditure test, they may lobby to the extent that their lobbying does not constitute more than an insubstantial part of the community foundation’s activities.

Private foundations have historically been cautious about funding nonprofit organizations that engage in lobbying. The IRS letter makes it clear that foundations may fund groups that lobby, and provides guidance that foundations may safely rely on to facilitate funding. Lobbying is a powerful advocacy tool for nonprofits, and the IRS letter provides a powerful endorsement and reinforcement for nonprofits to engage in the public policy arena — and an important clarification for foundations that want to support their work.

New Bill to Regulate Independent PACs Introduced

On Feb. 2, seeking to act before the 2006 congressional campaigns get underway, sponsors of the Bipartisan Campaign Reform Act of 2002 (BCRA) announced the introduction of a new bill aimed at regulating independent political committees. The 527 Reform Act of 2005, [S. 271](#), specifically targets groups exempt under Section 527 of the tax code, so that charities and other groups exempt under Section 501(c) that focus on issues, not candidates, would not be impacted. Chairman Trent Lott (R-MS), a co-sponsor of the bill, scheduled a hearing for March 8 in the Senate Rules and Administration Committee.

S. 271 is an improvement over last year’s version, as well as the approach advocated by some reformers in rulemaking proceedings at the Federal Election Commission (FEC) in the summer of 2004. It drops vague language that would have regulated any group whose “major purpose” is to influence federal elections and specifically targets 527 groups. However, some concern remains that the rationale behind the bill could be extended to 501(c) groups in the future.

The premise behind the bill is that all groups seeking to influence federal elections should be subject to the same

regulations, whether they are candidate campaigns, political parties or independent groups that have no ties to parties and candidates and do not coordinate with them. This rationale goes beyond the arguments used to uphold the constitutionality of BCRA, which addressed the potential for corruption in the link between donors and federal officeholders. Although sponsors cited the potential of large donors to independent political committees to corrupt the electoral process, the bill makes no distinction between 527s dominated by large donors and 527s that may be made up of small donors or are membership governed.

S. 271 would require 527 groups to comply with the same regulations as federal candidates, campaigns and parties. These include:

- a ban on corporate contributions and a \$ 5,000 annual limit on individual contributions;
- the use of only hard money (collected subject to federal contribution limits) for public communications that "promote, support, attack or oppose" a federal candidate, regardless of whether it expressly advocates election or defeat of that candidate;
- the allocation of expenses for communications that mention political parties and state or local candidates, even if no federal candidate is mentioned, so that 50 percent of the costs are paid from federally regulated funds;
- the allocation of expenses for communications that mention both state/local and federal candidates so that 50 percent of the costs are paid from federally regulated funds, regardless of how much time or space is allocated to the federal candidate;
- a cap of \$ 25,000 on contributions from individuals for the state and local component of a 527 that works on both federal and state/local elections.

The 50-50 allocation rule is similar to a regulation approved by the FEC last year currently being challenged in court by the political action committee (PAC) Emily's List.

The bill contains exemptions for 527 groups:

- with annual budgets under \$ 25,000;
- that work exclusively on non-federal campaigns or elections with no federal candidate on the ballot;
- that work exclusively on state or local ballot initiatives;
- that work on the nomination or confirmation of non-elected officeholders.

House sponsors of the bill said they believe leadership will take it up promptly. House Administration Committee Chairman Bob Ney (R-OH) said he expects to hold hearings on a similar bill.

Grassley Revenue Proposal Dims Chances for New CARE Act

On Jan. 24, Sen. Rick Santorum (R-PA) introduced [S. 6, The Family and Community Protection Act of 2005](#), a tax and welfare reform bill that includes the Charity, Aid, Recovery and Empowerment Act (CARE). Although the bill was included in Majority Leader Sen. Bill Frist's (R-TN) [Republican Top Ten Agenda for 2005](#), recent moves by Senate Finance Committee Chairman Charles Grassley (R-IA) dim the Act's chances of success.

Grassley is looking for revenue-raisers to offset the \$ 50 billion needed to extend the tax cuts currently scheduled to expire at the end of the year. He wants to combine revenue offsets from the Senate version of last year's corporate tax bill that died in conference with new offsets identified last week in the [Joint Committee on Taxation \(JCT\) report](#), including tightening deductions for the charitable donations and rules for tax-free bonds.

The Joint Committee on Taxation has issued the report suggesting ways to close the federal budget gap by picking up some of the revenue from tax-exempt entities. According to the Committee, the section on exempt organizations could pick up nearly \$ 7 billion over the next ten years.

The proposals include:

- denying exempt status for organizations that fail a five-year review for renewal;
- imposing a termination tax on exempt organization conversions;
- taxing participation in abusive tax shelter deals;
- extending intermediate sanctions;
- increasing excise taxes on private foundations;
- limiting deductions for conservation easements and gifts of clothing, household goods and other property;
- increasing penalties for failing to disclose tax returns;
- expanding the base of the excise tax on private foundation investment income;
- limiting the exempt status of fraternal beneficiary societies that provide commercial-type insurance;
- cracking down on credit counseling organizations.

Grassley, chairman of the Senate Finance Committee, which was already seeking to reform charitable organizations, says the recommendations "should help to remove the rose-colored glasses that a lot of people use to view tax-exempt organizations."

Investigation of Agency Use of Funds for Propaganda Requested

Several columnists, some with ties to nonprofits, have recently been the agents of covert propaganda for the Bush administration. An investigation by *USA Today* revealed that the Department of Education (ED) hired a public relations agency, Ketchum Incorporated, to promote the No Child Left Behind Act (NCLB). As part of this contract, Ketchum entered into a subcontract to pay Armstrong Williams, a conservative commentator, \$ 240,000, to promote the NCLB. Two more cases of similar actions have surfaced, prompting the Campaign Legal Center to request an investigation by the Department of Justice (DOJ).

For more than 50 years, annual federal appropriations laws have banned the outlay of appropriated funds on publicity and propaganda unless specifically authorized by Congress. This regulation prohibits covert propaganda that does not identify the government as a source, information intended for "self-aggrandizement" or "puffery" and materials that serve a solely partisan purpose. The prohibition reflects the belief that the federal government should not use its resources to influence public opinion in political or policy issues.

The contract between ED and Ketchum says that, "Ketchum shall arrange for Mr. Williams to regularly comment on NCLB during the course of his broadcasts." And that "Secretary (Rod) Paige and other Department officials shall have the option of appearing from time to time as studio guests to discuss NCLB and other important education reform issues." This practice, known as "pay to play," is a practice generally regarded as unprofessional, unethical and corrupt.

A recent investigation by the *Washington Post* found that syndicated columnist Maggie Gallagher received a \$ 21,000 contract with the Department of Health and Human Services (HHS) to write positive articles on the president's \$ 300 million Federal Marriage Initiative.

Gallagher also received an additional \$ 20,000 from a nonprofit organization, the National Fatherhood Initiative, to author a report titled, "Can Government Strengthen Marriage?" The National Fatherhood Initiative paid for the report using grant money it received from DOJ.

Gallagher publicized the policy, encouraged HHS to implement it, and commissioned polls to contradict other columnists who had found the public was not supportive of the Bush marriage initiative. Although Gallagher has argued that the contact was for specific work, the contract actually does not restrict the variety of activities in which Gallagher could be engaged.

Additionally, columnist Mike McManus received at least \$ 4,000 from HHS for his work in support of the Federal Marriage Initiative. Marriage Savers, a nonprofit organization operated by McManus, received \$ 49,000 from another organization that receives HHS money to promote marriage to unwed couples that are having children.

In both the Gallagher and McManus cases, Wade Horn, Assistant Secretary for Children and Families at HHS, is involved with the nonprofit through which money was funneled. Wade Horn has been in the marriage promotion business for quite some time. He is a co-founder and former president of the National Fatherhood Initiative, which made its national debut in March 1994 with Don Eberly serving as president, Horn as director, and David Blankenhorn as chairman of the board of directors. Eberly is a former White House advisor and civil society scholar who has served as Deputy Assistant to the President for the Office of Faith-based and Community Initiatives.

Additionally, Horn is a former board member of Marriage Savers, a nonprofit organization McManus founded in 1996 based in Potomac, MD, who was quoted in at least three columns McManus wrote.

In response, the Campaign Legal Center called on the Department of Justice to determine whether members of the Bush administration have violated federal law by using government-appropriated money to pay columnists to promote administration policies. Additionally, a number of representatives, led by Rep. Henry Waxman (D-CA), have requested a Government Accountability Office examination into the agency's use of covert propaganda.

Although the journalists have apologized, the use of taxpayer money to convince the public of the suitability of a particular policy is a violation of the public trust. Congress and DOJ must act to ensure that the government is spending money on the policies its constituents choose.

HHS Withholds Study Results Showing Head Start Is Effective

The Department of Health and Human Services (HHS) failed to publish two reports that show Head Start is effective in raising the academic performance of low-income children. The National Head Start Association (NHSA) recently leaked the data, noting that the Bush administration continues its efforts to dismantle the program. Head Start advocates have been fighting the administration's proposals to restructure the program for more than two years.

NHSA held a press conference on Feb. 3 announcing the results of two studies, one from the National Reporting System assessment, that showed Head Start children made gains in English and early math skills. Another study, the Head Start Family and Child Experience Survey, known as FACES, concluded that graduates of the program were at national educational norms in early reading and writing and close to catching up in math and vocabulary.

HHS's failure to release these study results is another chapter in its efforts to restructure the program. NHSA's advocacy on Head Start issues has generated a series of retaliatory actions by HHS, including an inaccurate letter threatening action against groups that legally used their private funds to lobby, and an unnecessary survey on administrative costs.

Budget Includes Anti-Regulatory Proposals

As expected, the White House included several threats of new anti-regulatory initiatives in today's budget release to Congress.

As OMB Watch [reported earlier](#), the White House used the occasion of the budget release to announce two proposals for creating unelected commissions with far-reaching powers to weaken protections of the public health, safety, civil rights, and environment:

- The first plan would force all government programs to plead for their lives on a periodic basis. (Some reports suggest that the sunset period would be 10 years, but the text in the president's budget did not otherwise specify the time frame.) All programs would automatically expire at the end of the sunset period unless Congress affirmatively votes to retain them. A "sunset commission" would conduct reviews of the programs' effectiveness and establish the basis for Congress's decision. This plan would effectively force all programs — which range from foster care funding for abused and neglected children to the entire Occupational Safety and Health Administration, the agency charged with protecting America's workers on the job — to divert resources from their vital missions into justifying their continued existence.
- The second plan would allow for ad hoc commissions charged with reviewing administration proposals for restructuring or eliminating programs in order to "improve performance and increase efficiency." These proposals would then be fast-tracked through Congress. In essence, the White House would be empowered to usurp Congress's own priorities for its agenda and force it to consider proposals for wide-ranging transformations in the structure of American government. Although the proposals to "consolidate" and "streamline" programs would seem initially more structural than substantive, structural changes can be the technical cover under which major substantive changes are hidden. For example, this year's budget calls for consolidating various block grants into the new "Strengthening America's Communities Grant Program," while subtle clues in the text — referring to "focuse[d] resources" and a "targeted, results-oriented approach" — could be the harbinger of changes in the direction, purpose, and function of the original grant programs.

From FY 2006 Budget, "Promoting Economic Opportunity and Ownership"

"Excessive regulations can prevent the creation and growth of new small businesses and the jobs they create; in the first term, the administration slowed the growth of new rules by 75 percent. The president wants to streamline regulations further and reduce paperwork to alleviate the burdens that unduly handicap America's entrepreneurs and job creators. The administration is taking action in several areas to streamline Federal regulations, while still moving forward with crucial safeguards for homeland security, human health, investor and environmental protection. Regulations should be analyzed based not just on their benefits, but also on their costs. When regulations are proposed, the

Another paragraph in the budget hints that the administration may be conceding to industry requests for increased reviews of regulations and sunseting older regulations. As OMB Watch [reported earlier](#), the White House has been conducting secret back-room meetings with corporate special interests to solicit their suggestions for government-wide reforms to regulatory policy that would weaken public safeguards in order to increase industry profits. A suggestion repeated in both those meetings and the regulatory "reform" panel of the White House economic summit called for sunsets at the level of individual regulations (rather than programs) and increased use of [Regulatory Flexibility Act](#) "section 610 reviews" of regulations' costs to [small businesses](#). The few scant news reports of those meetings tended to refer to sunsets and 610 reviews in the same breath, as though the increased reviews should be the occasion for forcing individual regulations to go through a sunset/justification process. Although the relevant text in the budget does not make that kind of explicit link, it does refer to "out of date" regulations being reviewed to determine if they produce net benefits.

There are two recurring themes in these proposals: performance and sunsets. Each is a Trojan horse: hidden in what seems a simple, uncontroversial virtue is an attack on public protections.

The performance theme, using the key words "results" and "performance," seems harmless enough: the idea is that government programs should be assessed for their results and modified when

scientific research supporting their enactment must be sound, and subject to careful scrutiny. And when regulations are out of date, they must be reviewed for relevancy, and to make sure the benefits they produce are at least equal to their costs."

performance is below expectations. The vision of performance management is that of the corporate executive moving around departments, consolidating programs, and cutting

under-performing projects, according to the executive's own whims or supposed savvy. Recent exposés of insider trading, falsified accounting and excessive CEO compensation unrelated to performance reveal that the corporate executive may not be the best model for government leadership. Moreover, it is incompatible with democracy, which is responsive to the will of the people rather than the fluctuations of the market, and the public interest, which is a guiding principle of equity and justice rather than heartless economic efficiency.

In fact, this administration's use of the "performance" theme has not comported with the promise of good government but instead has been to cover the White House's weakening of public protections and vital services to the most vulnerable. As Professor Beryl Radin has observed, the White House's performance rating tool (the Program Assessment Rating Tool, or "PART") has several measures of economic efficiency but no measures of equity or justice. Actual results themselves constitute only half of the total score, the rest of which is based on internal process. In the PART results in the 2006 budget, programs rated "ineffective" apparently were targeted for elimination if they were housed in HUD or the Department of Education; of the 22 programs rated ineffective, nine (41%) had their budgets completely cut, and seven of those were either HUD programs (22%) or Education programs (56%). The only "ineffective" program to see an increased budget was the Department of Treasury's Earned Income Tax Credit Compliance Program.

The other theme, that programs or regulatory protections should have sunset dates, implies that there is something outdated or time-worn about "older" regulations and programs. These "older" protections include the ban on lead in gasoline and requirements of FDA approval for drugs before they enter the market. They continue to safeguard the public in ways that are immeasurable (and, in fact, have already been factored into the cost of doing business — so that elimination of them could cause more disruption than "relief" for business).

The administration's hostility to regulatory safeguards makes some cruel sense in one narrow sense — it is, at the very least, consistent with the rest of the budget.

PART of the Problem: The Assault on Grant Programs

A notable trend in the PART assessments is a bias against programs that operate through grants, whether competitive grants or block grants.

- Competitive grant programs generally received low PART scores: 36% were rated ineffective or adequate, while only 24% were rated effective or moderately effective, and the remainder were given the inconclusive score "results not demonstrated."
- Competitive grant programs were also generally targeted for budget cuts: 56% were slated for decreased funding, while 34% were budgeted at the same level and only 19% were offered for budget increases.
- Block/formula grants were also scored low: 36% were rated ineffective or adequate, and an additional 37% were scored inconclusively as "results not demonstrated."
- Block/formula grants were likewise targeted for budget cuts: 43% for budget cuts, and 30% for static funding.
- Of the programs rated "ineffective" that were zeroed out completely, 89% were competitive or block/formula grants.

Grant programs largely send money to the state and local governments, many of which have countered the administration's attack on public safeguards with progressive regulatory policy initiatives.

Bill Would Place Homeland Security Above All Law

A bill to establish national identification card standards and restrict asylum claims also contains a controversial provision to empower the Secretary of Homeland Security to waive any and all laws in the course of securing the borders from illegal immigration. The provision also includes an exemption from judicial review that not only shields the waiver decisions from court scrutiny but also strips courts of any power to order remedies for anyone harmed by the consequences of such decisions.

Background

The issue that notionally triggered the push for this provision is the desire to complete second and third sets of fencing along the nation's southern border. One 14-mile section of fencing in the San Diego area remains to be completed, because the law requires the federal government and the California Coastal Commission to attempt to reach agreement on the environmental impacts of related construction work. As explained in a [Congressional Research Service analysis](#), that law ultimately allows the White House to waive the restrictions when necessary to national security.

A version of this measure was first introduced in the 108th Congress by Rep. Doug Ose (R-CA), but it failed to advance. Reps. David Dreier (R-CA) and Duncan Hunter (R-CA) tried in conference to sneak the amendment onto the bill to implement recommendations of the 9/11 Commission, but that effort was rejected by Senate conferees. News sources at the time reported that this amendment was one of several that zealous House Republicans pushed so vigorously that they almost derailed any agreement on the 9/11 bill.

About This Provision

The same language that almost derailed the conference committee has returned as section 102 of H.R. 418, the "REAL ID Act of 2005." It has two working parts: (1) the waiver authority and (2) the exemption from judicial review.

Waiver Authority

Under current law, the Department of Homeland Security (DHS), which now has border control responsibilities formerly granted to the Department of Justice, is already exempted from key environmental laws when necessary to speed up construction of additional fences along the southern border. Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), P.L. 104-208, 110 Stat. 3009-546 Div. C (codified at 8 U.S.C. § 1103 note), empowers the DHS Secretary to waive the National Environmental Policy Act and the Endangered Species Act "to the extent the [DHS Secretary] determines necessary to ensure expeditious construction" of additional physical barriers and roads along the U.S. border "in areas of high illegal entry into the United States." This waiver power has not, to date, been used.

The provision in the REAL ID Act would expand this waiver beyond environmental law to include all laws. It would thus place the DHS Secretary above all federal laws, environmental or otherwise, including the following:

- Child labor laws;
- Davis-Bacon wage determinations;
- Open government laws, such as the Freedom of Information Act;
- Ethics laws;
- Workplace health and safety laws;
- Whistleblower protections; and
- Procurement and contracting laws designed to assist small businesses.

It is unclear what limits, if any, would be placed on the DHS Secretary's power to waive federal law. Although subsection (b) of IIRIRA § 102 specifically charges DHS with building second and third fences along a 14-mile stretch of the southern border, that provision is only a specific instance of the larger charge in subsection (a) to "take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border." The REAL ID Act provision applies the expanded waiver power not to the geographically-limited IIRIRA section but, instead, to the broader scope of IIRIRA § 102(a).

This provision would thus place DHS above the law — above all law — whenever it acts to secure the borders and remove "obstacles to detection of illegal entrants."

Exemption from Judicial Review

The current version of this measure goes even further than its earlier iteration by adding a clause eliminating judicial review.

This section does not apparently have any limitations; it could shield not only government agencies but also private contractors from any liability for deaths, dismemberments, or any injuries whatsoever arising from border security activities. For example, the waiver authority would empower the DHS Secretary to give no-bid contracts for border construction to private companies and then shield those contractors from all employment discrimination and workplace safety laws. Workers harmed by the contractors would be left with no recourse whatsoever, because the exemption from judicial review would apply to "any cause or claim arising from" waiver decisions.

Text from the "REAL ID Act"

Sec. 102. Waiver of Laws Necessary for Improvement of Barriers at Borders.

Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ... is amended to read as follows:

"(c) Waiver. —

"(1) In general. — Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section.

"(2) No judicial review. — Notwithstanding any other provision of law (statutory or nonstatutory), no court shall have jurisdiction —

"(A) to hear any cause or claim arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1); or

"(B) to order compensatory, declaratory, injunctive, equitable, or any other relief for damage alleged to arise from any such action or decision."

OSHA Must Improve Safety for Meat and Poultry Workers

Recent reports highlight the dangerous and sometimes deadly working conditions faced by workers in the meat industry and the urgent need for the Occupational Safety and Health Administration (OSHA) to take increased actions.

Workers in Danger

At the behest of Sen. Edward Kennedy (D-MA), the Government Accountability Office has released a report on worker safety in the meat industry. The GAO report found that meat plant workers face “hazardous conditions involving loud noise, sharp tools, and dangerous machinery,” while a [report by Human Rights Watch](#) found that “many workers face a real danger of losing a limb, or even their lives, in unsafe work conditions.” The HRW report also found that “companies frequently deny workers’ compensation to employees injured on the job, intimidate and fire workers who try to organize, and exploit workers’ immigrant status in order to keep them quiet about abuses.”

Meat and poultry workers endure some of the most dangerous working conditions of any occupation. Workers often face physically demanding, repetitive work, during which they stand for long periods of time on production lines that move very quickly while wielding knives or other cutting instruments. They frequently work in extreme temperatures from zero to 40 degrees Fahrenheit, in loud, wet, dark and slippery conditions with poor ventilation. According to HRW, “the increasing volume and speed of production coupled with close quarters, poor training and insufficient safeguards have made meat and poultry work so hazardous. On each shift, workers make up to 30,000 hard-cutting motions with sharp knives, causing massive repetitive motion injuries and frequent lacerations.”

A 2001 survey from the Bureau of Labor Statistics (BLS) found that 14.7 out of 100 workers are injured on the job. GAO believes that this number is likely to be much higher due to underreporting by employers. GAO found injuries include cuts, burns, repetitive stress injuries, strains, injuries sustained from falls, fractures, amputations and sometimes death. The repetitive motions of meat and poultry work frequently lead to musculoskeletal disorders (MSDs). Exposure to harsh chemicals, blood and fecal matter often produces illnesses, which are “exacerbated by poor ventilation.”

OSHA Fails to Act

Despite the overwhelming evidence that worker protection in the meat and poultry industries must be strengthened, OSHA has largely failed to act. For instance, GAO believes that line speed may impact safety. And while OSHA agreed that slowing down the line may reduce injury, they have failed to collect data on the impact of line speed on worker safety and have made no attempts to assess the appropriate speed at which production lines should operate.

Nationwide Problem, But No Nationwide Solution

The GAO report suggests that some regional programs implemented by OSHA may have made an impact on worker safety, but OSHA has failed to apply these successes to the industry at large:

[Some] evidence suggests that OSHA’s cooperative programs have had a positive impact on the safety and health of workers. For example, a program initiated by OSHA’s Omaha Area Office, in which it partnered with several meatpacking plants in the state to share best safety practices, has, according to OSHA, improved worker safety and health in plants in Nebraska. The agency has not, however, implemented similar programs in other areas with large concentrations of meatpacking plants or extended the program to poultry plants.

OSHA has set [voluntary ergonomics guidelines](#) for the meat and poultry industry, which are unenforceable and a far cry from the real health and safety protections needed.

Injuries Underreported

Human Rights Watch reports that both “OSHA administrators and independent researchers have found a common corporate practice of underreporting injuries of all kinds. One recent estimate puts the undercount of nonfatal occupational injuries across industrial sectors as high as 69 percent.” Underreporting is particularly prevalent for MSD injuries.

Despite this high level of underreporting, OSHA’s methods for inspecting plants may not discover underreporting problems, according to the GAO. The current method for inspecting worksites mainly targets plants with high rates of illness and injury, while also inspecting a small number of worksites with low or average rates of illness and injury, but “the agency does not consider trends in worksites’ injury and illness rates over time. As a result, OSHA may not detect dramatic decreases in these rates that could raise questions as to the accuracy of the figures.”

OSHA’s data is also incomplete, GAO found, because the agency does not include data about cleaning and sanitation workers who are independently contracted. “These workers are not classified by BLS as working in the meat and poultry industry, although they labor in the same plants and under working conditions that can be even more hazardous than those of production workers,” the GAO concluded. For example, cleaning and sanitation workers in the meatpacking industry are frequently injured while cleaning dangerous machinery using severe chemicals.

Further, GAO found that OSHA’s method for collecting data leaves tracking injury data at plants difficult. Because “OSHA

does not assign a unique identifier to each plant for which data are collected," it is not possible to compare information about specific plants, and OSHA's success is therefore difficult to assess.

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